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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,092	12/21/2001	Jerome Branter	Roof	8292
7590	08/26/2004		EXAMINER	
Kajane McManus P.O. Box 344 Wonder Lake, IL 60097			YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/026,092	BRANTER, JEROME
	<b>Examiner</b>	<b>Art Unit</b>
	Winnie Yip	3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 April 2004.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-17 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-17 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

***Part II DETAILED ACTION***

This office action is in response to applicant's amendment filed on April 26, 2004.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Objections***

1. The claims 1-17 are objected to because the lines are crowded too closely together, making reading and entry of amendments difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

***Claim Rejections - 35 USC § 102***

2. Claims 1 and 5-10 stand rejected under 35 U.S.C. 102(b) as being anticipated by UK Patent No. 2,157,755.

UK reference shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms (no numbered), an upright (5, 6) engaged to each arm, each upright having a top lateral sleeve (11), an upper cross member (4) and a lower cross member (16) engaged to and between uprights, said upper cross member having ends being slideable received by the sleeves (11) on the uprights, the angulated arm having a flat portion being secured to a roof, the arm having a structure such as a brace (17) for being capable to mount a scaffolding thereover, and at least one net (18) stretched between and fixed to the uprights and cross members, wherein the net is removably secured to the upright and cross members by cooperating securing devices such as hooks which inherently via eyes (see lines 87-

Art Unit: 3637

88) for providing a safety feature to prevent an operative from falling from the roof of a building.

3. Claims 1, 5-8, and 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Elkins et al. (US Patent No. 5,779,227).

Elkins et al. shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms (16) each having a flat portion (38) being mounted to a roof, an upright (40) engaged to the flat portion of each arm, each upright having a top and bottom lateral sleeve (48, 49), an upper cross member (20) and a lower cross member (22 or 24) engaged to and between uprights, said cross members each having ends being secured to the sleeves of the uprights by pins (44, 50 or 68), the arm having a structure such as a brace (41) for being capable to mount a scaffolding thereover, and at least one net (28) stretched between and fixed to the uprights and cross members by suitable securing device.

#### *Claim Rejections - 35 USC § 103*

4. Claims 1-7, 9, 11, 14-15 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Probst (US Patent No. 3,901, 481) in view of UK Patent No. 2,157,755.

Probst shows and discloses a roof retaining apparatus comprising a framework including at least two angulated arms, each arm having a flat portion (6) having a plurality of angular slots (10) at a free end of the flat portion to engage with fasteners such as nails (9) for securing the arm to a roof (8), each arm having vertical sleeve (15) and an upstanding flange (21), the upstanding flange (21) forming a channel-shaped bracket that provides a structure for being

Art Unit: 3637

capable to mount a scaffolding (22) thereon, an upright (24) having a lower end being received and engaged by the vertical sleeve (15) to each of the arms, each upright (24) having at least a top and bottom lateral sleeves (26, 28), an upper cross member (27) and a lower cross member (29) each having ends being slideable received by the sleeves (26 or 28) on two uprights respectively, said each sleeve having bores receiving with a pin (30) therein to engage and secure the ends of cross members to the uprights. Probst fails to define the roof retaining apparatus including a net stretched between and fixed to the uprights and the cross members as claimed. UK reference teaches a roof retaining apparatus comprising a framework including uprights and cross members, and a net having securing device such as hooks (19, 20) along the edges of the net to hang the net pivoting from an upper cross member and rest against a lower cross member. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst having a net hooked and stretched between the cross members and fixed to the framework as taught by UK reference for providing a safety device with additional safety features for preventing an operative falling from the roof of the building.

5. Claims 8 and 10 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Probst '481 in view of UK Patent '755 as applied to claim 1 above, and further in view of Pedley (US Patent No.3,527,319).

Claims are considered to be met by Probst combined with UK reference as explained and applied above rejections except that either Probst or UK reference does not define the roof retaining device including the upright and cross members having cooperating securement devices

comprise eyes for cooperatively receiving the securement devices along the edges of a net for detachably securing the net between the cross members. Pedley teaches a roof safety device comprising a framework including uprights (15) and cross members (14), and a net (1) detachably mounted to the framework, wherein the net (1) includes hooks (24) providing securement devices mounted along the edges of the net, the framework including eyes (25) mounted on the uprights each having a plurality of eyes providing cooperative securing device for cooperatively receiving the hooks of the net for detachably mounted the net to the framework. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst combined with UK reference having the framework providing with cooperating securing devices such eyes to cooperatively receive the securing device such as hooks formed along the edges of the net as taught by Pedley, as a well known removable cooperative mounting mechanism, for detachably securing the net to the framework to provide a safety device to the roof retaining apparatus.

6. Claims 12-13 and 16-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Probst '481 in view of UK Patent '755 as applied to claims 1 and 11 above, and further in view of Murray (US Patent No. 6,053,281).

Claims are considered to be met by Probst combined with UK reference as explained and applied above rejections except that either Probst or UK reference does not define the sleeve, the upright, and the cross member end flanges of the apparatus having bores being aligned together and a pin being engaged through the aligned bores for securing the upright and the cross member together. Murray teaches a safety device comprising an arm being secured to a building roof, a

vertical sleeve (32) latterly mounted on the arm, and an upright post (12) having lower end being received into the vertical sleeve (32), wherein the vertical sleeve (32) and the lower end of the upright post (12) having bores being aligned each other and a pin (34) being engaged through the aligned bores for securing the upright post to the vertical sleeve. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the roof retaining apparatus of Probst combined with UK reference having the upright, the cross member, and the sleeves respectively having bores aligned each other to receive a pin passed therethrough as taught by Murray, as an old and well known connecting mechanism, instead of having a pin to engage an inside member of Probst for removably and adjustably mounting two structural elements together.

*Response to Argument*

7. Applicant's arguments filed April 26, 2004 have been fully considered but they are not deemed to be persuasive.

a. In response to Applicant's argument that UK reference '755 request two frameworks one to each side of the ridge of the roof which is not required by Applicant's invention, it must be noted that UK reference discloses the invention as claimed. Anticipation is established when a single prior art reference discloses, expressly or under principles of inherence, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or

fully met by the reference. *Kalman v. Kimberly Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984). In this case, the UK reference discloses a frame secured on one side of the ridge of the roof including all structural limitation as claimed. UK reference discloses that frame including at least two angulated arms each mounted to a side of the roof by an elongated member (1, 2) and a feet member (12). Wherein the elongated member (1 or 2) and the feet member (12) are considered to be the structure for mounting the angulated arms to the roof as claimed since applicant does not specifically define how the angulated arms being mounted to the roof into the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the rejected claims. In fact that it discloses additional structure not claimed is irrelevant.

b. In response to applicant's argument that Elkins et al. '227 does not disclose a roof retaining apparatus, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, Elikns et al. disclose an apparatus comprising a framework including elements for mounting a net and scaffolding on a structural surface as recited in the rejected claimed. Elikns et al. discloses the framework including angulated arms (38) that is used to mount on a surface which is capable to be a roof surface as claimed since applicant does not specifically claim the scaffolding and how the scaffolding being mounted to the apparatus, and how the apparatus

being mounted to the roof. Therefore, the apparatus of Elkins et al. is considered in the same field of applicant's endeavor.

c. In response to applicant's argument that there is no suggestion to combine the references of Probst and UK references '755, and further Pedley and Murray, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Probst and UK reference '755 and Murray teach various retaining apparatus for providing a safety device over a pitched roof for preventing the workmen or equipment failing from the roof as the same field of applicant's endeavor. UK reference is used as a reference only to teach mounting a net between the rails to fill the spaced between the rails for providing additional safety features. Pedley is used as a reference only to teach the net would have connecting means including hooks cooperating with eyes for providing removable connections to connect the net to the upright as the claimed invention. Murray is used as a reference only to teach two structural members having aligned bores to receive a pin for more securing and detachably mounting the two members together. All of the foregoing is within the skills, competence and knowledge of the person with ordinary skills in the constructional arts. Therefore, it would have been obvious to one ordinary skill in the art, at the time the invention was made to modify the safety device of Probst having a net mounted to the rails to fill the space between the rails as taught by UK references to provide additional safety means and having the upright and cross

member having aligned bore to receive a pin therethrough as taught by Murray to more securely connecting two members together.

Therefore, the rejections appear still proper.

***ACTION IS FINAL***

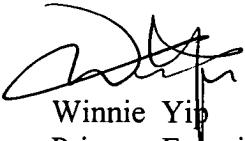
8. Applicant's amendment necessitated the new grounds of rejection. Accordingly, THIS ACTION IS MADE FINAL. See M.P.E.P. ' 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. ' 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. ' 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip  
Primary Examiner  
Art Unit 3637

wsy  
August 20, 2004